

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF TEXAS
3 FORT WORTH DIVISION
4 UNITED STATES OF AMERICA,) CASE NO. 4:16-CR-132-A
5 Government,)
6 VERSUS) FORT WORTH, TEXAS
7 KEVIN KYLE KILLOUGH (07),) FEBRUARY 9, 2017
8 Defendant.) 10:00 A.M.

10 VOLUME 1 OF 1
11 TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE JOHN McBRYDE
UNITED STATES DISTRICT COURT JUDGE

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24 Proceedings reported by mechanical stenography, transcript
25 produced by computer.

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PROCEEDINGS

February 9, 2017 - 10:00 a.m.

COURT SECURITY OFFICER: All rise.

4 Hear ye, hear ye, hear ye, the United States
5 District Court for the Northern District of Texas at Fort
6 Worth is now in session, the Honorable John McBryde presiding.

7 Let us pray. God bless the United States and this
8 Honorable Court. Amen.

9 Please be seated.

15 And Mr. Smith is here for the government, and
16 Mr. Brown is here for the defendant.

17 I'll have the defendant state his name for the
18 record.

19 THE DEFENDANT: Kevin Killough.

1 guilty of that offense, and, of course, we're here today for
2 sentencing based on the conviction resulting from that jury
3 verdict.

4 Mr. Brown, did you and your client receive in a
5 timely manner the Presentence Report and the addendum to it?

6 MR. BROWN: Yes, Your Honor, we did.

7 THE COURT: And did both of you read those items and
8 then discuss them with each other?

9 MR. BROWN: Yes, we did.

10 THE COURT: Okay. There were some objections to the
11 Presentence Report. You've seen the government's response to
12 the objection, and the probation officer's response, and my
13 order of January 25, 2017, expressing my tentative conclusion
14 that, except to the extent accepted by the probation officer,
15 the objections are without merit.

16 Do you still wish to pursue any of those objections?

17 MR. BROWN: Yes, Your Honor.

18 THE COURT: Okay. Do you have any evidence you want
19 to offer in support of any of the objections?

20 MR. BROWN: I have what's been marked as Defense
21 Exhibit 1. It's an affidavit addressing the quantity
22 attributed to Mr. Killough from Michael Jordan.

23 THE COURT: Okay. Why don't you hand it -- have you
24 shown that to the government's attorney?

25 MR. BROWN: I am now, Your Honor.

1 *THE COURT:* You're now showing it to the
2 government's attorney?

3 *MR. BROWN:* Yes, sir.

4 *THE COURT:* Okay. Once he's had a chance to read
5 it, hand it up.

6 Okay. You're offering -- what's the number?

7 *MR. BROWN:* Defense Exhibit 1.

8 *THE COURT:* Okay. Hand it up. It's received.

9 Okay. Do you have any other evidence you wish to
10 offer in support of any of your objections?

11 *MR. BROWN:* No other evidence, Your Honor.

12 *THE COURT:* Okay. Let's take up your objections one
13 at a time.

14 Okay. Your first objection is to paragraph 14 of
15 the Presentence Report, and it's directed to -- it's directed
16 to paragraph 14, and that's the paragraph that discusses an
17 acquisition by the defendant of methamphetamine at the
18 residence of a person by the name of Priest three times each
19 week for a total amount, and it gives the total amount.

20 Okay. There being no evidence contrary to what is
21 recited in that paragraph of the Presentence Report, the
22 Court, of course, adopts the findings of the Court since they
23 are -- findings stated in that paragraph, since they are
24 recited to be based on reliable information, and I'll overrule
25 that objection.

1 Okay. Your next objection --

2 *MR. BROWN:* Your Honor, may I interrupt you?

3 *THE COURT:* Pardon?

4 *MR. BROWN:* May I interrupt you?

5 *THE COURT:* Yes.

6 *MR. BROWN:* Regarding the Priest objection, when
7 she's holding Mr. Killough responsible for 54 kilograms, the
8 objection was based on the fact that the dates that Ms. Priest
9 indicated could not be true. There is a stipulation in the
10 trial --

11 *THE COURT:* Oh, okay. Now, I -- I remember now that
12 issue, and, of course, the government dealt with that issue in
13 its response in that -- that there obviously was an incorrect
14 recollection as to the date, and I'm inclined to agree with
15 the government in its response.

16 The probation officer accepted that objection in
17 part and corrected the dates, so I think that takes care of
18 that objection.

19 Is there any -- does the government have anything to
20 offer on that objection beyond what we've already discussed?

21 *MR. SMITH:* No, Your Honor.

22 *THE COURT:* As I understand the government's
23 position, the dates in paragraph 14 are not correct and that,
24 as corrected, the dates would be consistent with her custody
25 situation.

1 Is that the government's position?

2 *MR. SMITH:* Yes, Your Honor.

3 *THE COURT:* Okay. Well, I'll overrule that
4 objection. That appears to be -- to me to be the fact.

5 *MR. BROWN:* Your Honor, the dates that Ms. Priest
6 alleges Mr. Killough was in her house handling 54 kilograms
7 could not be possible because Mr. Killough was in custody at
8 the time, and that was stipulated to in the trial.

9 *THE COURT:* I think we've dealt with that. That was
10 what I was just talking about. Obviously those dates in the
11 Presentence Report, paragraph 14, are incorrect dates and that
12 somebody's memory was defective on the date.

13 *MR. BROWN:* But the --

14 *THE COURT:* But otherwise, the allegations in
15 paragraph 14 are consistent with the other information, so I'm
16 going to overrule that objection.

17 *MR. BROWN:* Your Honor, the Court also indicated
18 that the government needs to establish the reliability of
19 those dates, and they have not done so.

20 *THE COURT:* Well, I -- the government doesn't
21 contend that those dates are reliable. The government admits
22 that the dates are incorrect, as I understand it.

23 Is that the government's position?

24 *MR. SMITH:* Yes, Your Honor.

25 *THE COURT:* So we don't need to concern ourselves

1 with the reliability of those dates. The government
2 acknowledges that those dates are not correct and that they
3 are simply a misrecollection of memory as to the dates.

4 Okay. Your objection number 2 -- now, the objection
5 in number 2 is one that really doesn't affect the guidelines
6 because that -- that's to paragraph 15 of the Presentence
7 Report -- the 226.8 grams was not counted by the probation
8 officer in the overall calculations of the quantity to be
9 assessed against the defendant.

10 I think you were talking about the last sentence --

11 *MR. BROWN:* Yes, Your Honor.

12 *THE COURT:* -- of paragraph 15, and the probation
13 officer simply didn't use that number in calculating the
14 quantity to be attributed to the defendant, so it's -- I'm not
15 going to deal further with that because it's not a relevant
16 issue.

17 Okay. Objection number 3 is to paragraph 24.

18 Okay. And that's the subject of the exhibit? Is
19 that what the purpose of your Exhibit 1 is, to deal with
20 paragraph 24?

21 *MR. BROWN:* Yes, Your Honor.

22 *THE COURT:* Okay. And it's a statement -- the
23 exhibit is a statement by the defendant that he never received
24 methamphetamine from Mr. Cropp.

25 Since an issue has been raised on that, does the

1 government have any evidence it can offer in support of
2 paragraph 24?

3 *MR. SMITH:* Yes, Your Honor. The government will
4 call Officer Crum on that.

5 *THE COURT:* Okay. You may proceed.

6 **CYRUS CRUM,**

7 having been previously duly sworn, testified as follows:

8 **DIRECT EXAMINATION**

9 **BY MR. SMITH:**

10 Q. Please state your name.

11 A. Cy Crum.

12 Q. And you've been sworn in this case?

13 A. I have.

14 Q. Okay. And you're one of the case agents in the case;
15 is that right?

16 A. I am.

17 Q. Now, do you recall a Mr. Jordan giving information on
18 Mr. Killough?

19 A. Yes, I do.

20 Q. And what did Mr. Jordan say as it relates to
21 Mr. Killough?

22 A. Mr. Jordan identified Mr. Killough by a photograph.
23 He then stated that he had witnessed Michael (sic) Shawn
24 Cropp, also known as Buck, provide Mr. Killough one kilogram
25 on two occasions between September and December of 2015.

1 Q. And with regards to Mr. Jordan, has he been a
2 reliable source of information?

3 A. Yes, sir. His information has been used and relied
4 upon in several proceedings, as well as for investigative
5 purposes.

6 MR. SMITH: And for the record, Your Honor, the
7 government has submitted Mr. Jordan's proffer interview as
8 part of its response to defendant's objections. It's the
9 seventh report, I believe, attached to the filing.

10 No further questions, Your Honor.

11 THE COURT: What page is that on?

12 MR. SMITH: It is page 7 of the Michael Jordan
13 interview, Your Honor.

14 THE COURT: Hold on just a second.

15 In the summer of 2015 -- and I'm reading from it, on
16 page 7 of the exhibit to the government's response to
17 defendant's objections to the Presentence Report, under the
18 tab "Michael Jordan" and it appears to be an interview,
19 proffer interview, of Michael Jordan that occurred on May 12,
20 2016.

21 And on page 7, it says: In the summer of 2015,
22 Jordan witnessed Cropp provide Motorcycle Mike --

23 Now, who is Motorcycle Mike?

24 THE WITNESS: Michael Barrett, he's a codefendant in
25 this case.

1 *THE COURT:* Well, I must be looking at the
2 wrong -- which paragraph is it?

3 *MR. SMITH:* It's about middle of the way down, Your
4 Honor, so it would be --

5 *THE COURT:* Okay. I'm finding it. I found it. It
6 says, Jordan interviewed -- identified Kyle Killough from a
7 Facebook photo. Jordan witnessed Cropp provide one kilogram
8 of meth to Killough on two occasions during the period from
9 September to December 2015. These transactions occurred in
10 hotel rooms. One of them may have been at the Scottish Inn.

11 Now, did you participate in that interview?

12 *THE WITNESS:* Yes, sir, I believe I did.

13 *THE COURT:* Who was actually doing the questioning
14 of Mr. Jordan?

15 *THE WITNESS:* It would have been one of three of the
16 case agents.

17 *THE COURT:* Okay. But you were there when he made
18 the statement I just read?

19 *THE WITNESS:* Yes, sir. My memory is being there
20 for several different interviews. Without actually looking at
21 the report, I'm hesitant to say 100 percent because there was
22 so many interviews conducted, but to the best of my
23 recollection, I was present for that one.

24 *THE COURT:* Well, what level of reliability have the
25 investigators found in the information provided by Mr. Jordan

1 in his proffer interview?

2 *THE WITNESS:* Mr. Jordan, we have not found in any
3 instance where he was unreliable. Not only did he provide
4 information with regards to narcotics trafficking, he provided
5 information in relation to the Aryan Brotherhood of Texas and
6 his membership, as well as the membership of others and their
7 criminal activities. He has not in any way been found to be
8 uncredible or to have been untruthful with us.

9 *THE COURT:* Well, have you -- have the investigators
10 verified the truthfulness of things he's said?

11 *THE WITNESS:* Yes, sir, and we've relied upon that
12 truthfulness in different proceedings, and I believe he's -- a
13 5K motion was filed on his behalf in relation to those
14 proceedings.

15 *THE COURT:* Okay. Do you have any more questions?

16 *MR. SMITH:* No, Your Honor.

17 *THE COURT:* Okay. Do you have any questions,
18 Mr. Brown?

19 *MR. BROWN:* Yes, Your Honor.

20 **CROSS-EXAMINATION**

21 **BY MR. BROWN:**

22 *Q.* So, Mr. Jordan claims that he observed Mr. Cropp give
23 Mr. Killough one kilogram on two occasions?

24 *A.* That's what he stated, yes.

25 *Q.* And did he say how much that cost?

1 A. He did not.

2 Q. Did he say if it was on the front?

3 A. He did not, and I'm not sure that we asked.

4 Q. So he's just giving kilograms to Mr. Killough without
5 any money exchange or promise of credit return?

6 A. He did not state either way.

7 Q. Just the statement that he saw it and that's good
8 enough for the government to believe that that happened?

9 A. Yes, in combination with everything else that he has
10 told us and that we've been able to corroborate or been able
11 to verify.

12 Q. Such as when it happened?

13 A. Such as what, sir?

14 Q. When it happened.

15 A. The dates?

16 Q. Yes.

17 A. In some instances, yes.

18 Q. In this instance involving Mr. Killough.

19 A. Did we verify the dates?

20 Q. Did you ask him about the date?

21 A. I don't recall whether we asked him specifically
22 about the dates. I believe the date range that he provided
23 was a general time frame.

24 Q. 2014?

25 A. '15.

1 Q. But that's just a guess on your part?

2 A. No, I believe that's what -- that's what he said.

3 Q. Is it specified in the report?

4 A. I believe so. I believe it's the summer/fall of

5 2015.

6 Q. Do you have the report in front of you?

7 A. No, sir.

8 Q. Okay. And where did this occur?

9 A. As I've already testified, he said it occurred in a

10 motel room, possibly the Scottish Inn.

11 Q. In Arkansas?

12 A. In the Fort Worth area, the DFW area.

13 Q. And he couldn't be more specific as to where in the

14 DFW area he was?

15 A. No, he was not more specific.

16 Q. Just, he saw it, doesn't really exactly recall when

17 or where or time of day? Was it night?

18 A. It wasn't any more specific.

19 Q. How did he get there?

20 A. It wasn't specific.

21 Q. Just his general statement that two kilograms --

22 THE COURT: I think you've already gone over that

23 enough. Let's don't keep repeating things. Let's go to

24 something else.

25 MR. BROWN: Well, Your Honor, I've got another

1 question about the details of this.

2 THE COURT: Well, I think you've already asked him
3 if he was more specific, and I think he's indicated that he
4 wasn't. Maybe I misunderstood him.

5 THE WITNESS: No, sir. I've testified to everything
6 that he told us in relation to this particular event.

7 MR. BROWN: Nothing further, Your Honor.

8 THE COURT: Okay. Do you have any further
9 questions?

10 MR. SMITH: No, Your Honor.

11 THE COURT: Okay. You can step down.

12 THE WITNESS: Yes, sir.

13 THE COURT: Okay. I'll overrule that objection.
14 I'm satisfied that the information provided by Mr. Jordan on
15 the subject under discussion is reliable information and is
16 more reliable than the defendant's own denial as contained in
17 Defendant's Exhibit 1, so I'll sustain that objection.

18 I find that -- from a preponderance of the evidence
19 that Mr. Cropp did provide the defendant two -- one kilogram
20 on two different occasions of methamphetamine in the September
21 to December 2015 era -- time frame.

22 Okay. So I'll overrule that objection.

23 Let's see. Objection number 4 is next, and it's
24 objection 29 through 32. Let me study that again.

25 He did -- the defendant did unqualifiably represent

1 to the Court in the document he filed on September 13, 2016,
2 that his attorney specifically told him that he, the
3 defendant, was not going to be prosecuted federally and that
4 he had -- that had he known that he was going to be indicted
5 federally, he would not have accepted a plea in the state
6 court offense of 5 years deferred adjudication.

7 His attorney filed either a declaration or an
8 affidavit saying that that wasn't true, that, in fact,
9 he -- she told him that they were not interested in him, but
10 she also went to -- went ahead to explain to him that they
11 could investigate or prosecute him, should they choose to do
12 so, at any time.

13 So I agree that he has engaged in obstruction of
14 justice as outlined in paragraphs 29 through 32 of the
15 Presentence Report, and that the probation officer correctly
16 included a two-level increase in the offense level based on
17 obstruction of justice, in the total offense level, so I'll
18 overrule that objection.

19 Is that the last objection?

20 *MR. BROWN:* Your Honor, I did take a look at the
21 trial transcript of Mandy Turner, and it's in conflict with
22 the amount attributed to Mr. Killough in the Presentence
23 Report, so I have to make an oral objection to the quantity in
24 the Presentence Report based on Mandy Turner's police report
25 statements versus her testimony that she only dealt with

1 Mr. Killough for 6 ounces in her sworn testimony in trial.

2 THE COURT: What are you objecting to? What
3 paragraph of the Presentence Report?

4 MR. BROWN: 23.

5 THE COURT: And what is your specific objection?

6 MR. BROWN: Specifically, that Turner conducted on
7 one occasion --

8 THE COURT: Help me find that. Where is that in the
9 paragraph?

10 MR. BROWN: Well, it starts off with, on three
11 occasions, Turner sold Killough between 4 and 6 ounces of
12 methamphetamine.

13 THE COURT: Okay. And you say that's not correct?

14 MR. BROWN: No, Your Honor.

15 THE COURT: Okay. And what evidence do you have to
16 base that on?

17 MR. BROWN: Page 29 of Mandy Turner's trial
18 transcript.

19 THE COURT: Well, that don't -- that's not in
20 evidence here.

21 MR. BROWN: No, Your Honor, but it -- I would like
22 to offer it then.

23 THE COURT: Well, what's the government's thought
24 about him making an objection now that he's never made before?

25 MR. SMITH: Well, Your Honor, it's -- there's two

1 things. It's untimely, of course, but beyond that, I think
2 that -- let me find the paragraph again, paragraph --

3 *THE COURT:* He's looking at paragraph 23.

4 *MR. SMITH:* 23, okay.

5 *THE COURT:* And he's talking about the -- looks like
6 the second sentence in the paragraph that starts the fourth
7 line down, which says: On three occasions, Turner sold
8 Killough between 4 ounces and 6 ounces of methamphetamine.

9 *MR. SMITH:* Of course, I haven't studied the
10 transcript as it relates to that, that -- whatever alleged
11 inconsistency may exist, but just looking at the base offense
12 level, even if the Court were to delete Mandy Turner's
13 information from paragraph 23, it wouldn't affect the base
14 offense level.

15 I think there's two things at issue with Mandy
16 Turner. Not only did she distribute directly to Mr. Killough,
17 but she also used Mr. Killough in an assistance-type capacity
18 where Mr. Killough helped her distribute drugs, and I think
19 that she also testified to Mr. Killough kind of turned the
20 tables on her and then enforcing a drug -- helping Mr. Navarro
21 enforce a drug debt against her, actually, too.

22 So there's a number of different ways that
23 Mr. Killough was involved in large quantities of
24 methamphetamine distribution, both with Ms. Turner -- that is,
25 distributing with her and for her -- and then on the opposite

1 end, that is, Mr. Killough helping enforce a debt owed to
2 Mr. Navarro from Ms. Turner.

3 So there's a number of different ways that
4 Mr. Killough's accountable for kilogram-type quantities of
5 methamphetamine related to Ms. Turner, and Mr. Navarro on
6 behalf of Ms. Turner, Mandy Turner, that is.

7 *THE COURT:* Okay. Your first point was that if you
8 took out 340.2 grams of methamphetamine from the total amount
9 that he's being held accountable for, it wouldn't make any
10 difference in the offense level?

11 *MR. SMITH:* Correct.

12 *THE COURT:* That appears to be the case. What's
13 your response to that?

14 *MR. BROWN:* Well, when it comes to the 54 kilograms
15 attributed by Priest, yes, I would agree that Ms. Turner's
16 quantity doesn't change the present guidelines, but I'd like
17 to address, in a motion for a variance, that issue with
18 Ms. Priest again.

19 *THE COURT:* Okay. You say you want to offer a trial
20 transcript of something?

21 *MR. BROWN:* Yes, Your Honor. It's incomplete, but
22 the trial transcript was made available Friday or Monday
23 of -- Friday of last week or Monday of this week.

24 *THE COURT:* In this case?

25 *MR. BROWN:* In -- Ms. Turner's testimony, yes, Your

1 Honor.

2 THE COURT: In this case?

3 MR. BROWN: Yes, sir.

4 THE COURT: Okay. Let's see if I have that.

5 Well, I don't find it in the sentencing file. Was
6 it in connection with this defendant or some other defendant?

7 MR. SMITH: No. The Court ordered the government to
8 produce it as it relates to Charles Bounds, and the government
9 filed that -- I don't have the document number, but the
10 government filed it on February 3rd, which is Friday.

11 THE COURT: Okay. Well, that's a different
12 defendant. Let's see if it happens to be before the Court
13 now.

14 MR. BROWN: Well, yes, Your Honor, and I did take a
15 look at that transcript just recently, but it does --

16 THE COURT: It is -- I do have it in the sentencing
17 file for Defendant Bounds.

18 What page are you talking about?

19 MR. BROWN: 29.

20 THE COURT: Let me see if I can find what you're
21 talking about. Page 29?

22 MR. BROWN: Yes, sir, line 19, 19 and 20 and 21 is
23 her response.

24 THE COURT: So she said she just distributed
25 6 ounces?

1 MR. BROWN: Yes, sir.

2 THE COURT: And your complaint is that in the
3 Presentence Report it said she delivered between 4 ounces and
4 6 ounces on three occasions.

5 MR. BROWN: And then goes to mention one occasion
6 6 ounces, on one occasion 3 ounces, one occasion 1.5 ounces,
7 and then the total of, I guess, 340 grams, when she testifies
8 that the total amount that Mr. Killough distributed for her
9 or -- and she never says that he received from her anything
10 but 6 ounces, so that's a significant discrepancy in what she
11 reported to the police versus what she testified to.

12 THE COURT: Okay. You're saying -- it's kind of
13 hard to tell exactly what's happening when you're reading just
14 a little bit out of context, but you're saying that she said
15 that your client distributed for her only 6 ounces?

16 Is that what you're saying she said?

17 MR. BROWN: Yes.

18 THE COURT: Well, the Presentence Report said that
19 she sold him 4 ounces on one occasion and 6 ounces, resulting
20 in a conservative estimate. Well, I can see where there might
21 be some discrepancies between what she said at trial and what
22 is said in the Presentence Report.

23 MR. SMITH: Your Honor, if I may?

24 THE COURT: Yes.

25 MR. SMITH: I think, to be fair, the testimony

1 begins on page 24 of Mandy Turner's trial transcript, and
2 that's where he starts talking about -- I'm sorry, where Mandy
3 Turner starts talking about Mr. Killough, and there's some
4 background information on there.

5 And then we kind of go through -- or I should say
6 Miss -- on page 25, starting on page 25, Ms. Turner starts
7 going through a little bit of her relationship with
8 Mr. Killough. It starts with a person by the name of Vic
9 Tabor and they -- it says there on that page that -- or she
10 testified to that I believe she used Mr. Killough to
11 distribute 6 ounces or so to Vic Tabor. That's going onto the
12 next page, page 26. That's 6 ounces there.

13 Then we start talking about or she starts talking
14 about, on the bottom of page 26 and the top of page 27, a
15 2-kilogram deal between Juan Navarro and Kevin Kyle Killough
16 and herself.

17 Then going between Oklahoma and Arkansas, that's on
18 page 27.

19 On page 28 as well, talking about Mr. Killough's
20 role kind of in that -- in that deal there.

21 Then onto page 29, we actually identify or,
22 actually, Ms. Turner identifies Mr. Killough, and then this is
23 where probably Mr. -- or the defense -- or defense are getting
24 hung up on the amounts, the quantities. In the middle of that
25 page the question is asked, and there was also -- how many

1 times had you used Kevin Kyle Killough to distribute drugs to
2 or for you or pick up money for you during that time frame?

3 10 to 15.

4 What kind of quantities and money are we talking
5 about?

6 And I'm reading from the transcript at this point,
7 page 29: Less than \$1,000, and just one time on the
8 distribution.

9 And then we go talk about some more distribution
10 quantities. Another 6-ounce quantity is mentioned. And we
11 kind of go on and on, and then we go into -- onto page 30 is
12 the drug debt. Now Mr. Killough is being used to enforce a
13 drug debt for about almost \$10,000, and that goes on for the
14 next couple of pages.

15 *THE COURT:* Well, I'm not satisfied that her trial
16 testimony, when considered in its entirety, is inconsistent
17 with what's stated in paragraph 23 of the Presentence Report.
18 And as the government's pointed out, if there was a
19 discrepancy, it wouldn't affect the guideline ranges or the
20 total offense level, so I'm going to overrule that objection.

21 Do try from now on, if you have an objection, put it
22 in written form, so we won't start dealing with it here in the
23 courtroom for the first time, but -- and I'll accept the fact
24 that you've made a verbal objection, and I've overruled the
25 objection.

1 Okay. There being no further objections to the
2 Presentence Report, the Court adopts as the fact findings of
3 the Court the facts set forth in the Presentence Report as
4 modified or supplemented by the addendum and any facts I've
5 found from the bench, and the Court adopts as the conclusions
6 of the Court the conclusions expressed in the Presentence
7 Report as modified or supplemented by the addendum and any
8 conclusions I've expressed from the bench.

9 The Court concludes that the total offense level is
10 43; that the Criminal History Category is V; that the
11 imprisonment range is life imprisonment; that the supervised
12 release range is 8 years; that the fine range is \$50,000 to
13 \$8 million; and that a special assessment of \$100 is
14 mandatory.

15 Okay. At this time you can make whatever statement
16 you would like to make on behalf of your client, Mr. Brown.

17 *MR. BROWN:* Your Honor, we also filed a motion for
18 sentence variance.

19 *THE COURT:* Okay. Do you have any evidence you want
20 to offer in support of that?

21 *MR. BROWN:* Well, it's the -- no further evidence,
22 Your Honor, except I need to point out that the issue of
23 reliability is key here, and when it comes to Alisha Priest in
24 particular, the government's response saying, well, generally
25 it's corroborated by other statements, I'd like to point out

1 that that's not true at all. There's specific instances where
2 the general corroboration, upon further detailed viewing,
3 takes that apart.

4 *THE COURT:* Let me stop you a minute. I'm going to
5 let you make a statement on behalf of your client, and in that
6 statement you can say whatever you want to say about this
7 request, motion for sentence variance, but I wanted to be sure
8 where we are now on an evidentiary standpoint, and as I
9 understand it, you don't have any evidence you want to offer
10 in support of that statement?

11 *MR. BROWN:* Well, then I'll call Officer Crum to the
12 stand, Your Honor.

13 *THE COURT:* For what?

14 *MR. BROWN:* I'd like to ask him about Alisha
15 Priest's two police reports.

16 *THE COURT:* About her what?

17 *MR. BROWN:* Police reports.

18 *THE COURT:* Well, isn't that the objection I've been
19 dealing with a moment ago?

20 *MR. BROWN:* Well, when it comes to this motion for
21 sentence variance, it goes to the issue of reliability.

22 *THE COURT:* Well, I've already dealt with that. I
23 found that what the Presentence Report stated was reliable.

24 *MR. BROWN:* Well, when it comes to evidence for this
25 sentence variance, I would like to call Officer Crum.

1 *THE COURT:* Well, we're not going to replow the
2 ground we've already plowed.

3 *MR. BROWN:* We never got to that issue.

4 *THE COURT:* Okay. Come back up to the stand, and he
5 wants to ask you if you found that -- is it Priest is
6 the -- if you found her to be a reliable person for providing
7 information.

8 Go ahead and answer that question. That's the
9 question.

10 *THE WITNESS:* Yes, we did, Your Honor, found her to
11 be reliable.

12 *THE COURT:* And did you find any indication that she
13 gave you false information?

14 *THE WITNESS:* No, sir.

15 *THE COURT:* And did you verify through inquiry and
16 investigation the accuracy of her information?

17 *THE WITNESS:* Yes, sir.

18 *THE COURT:* Okay. You can step back down. Thank
19 you.

20 *MR. BROWN:* Your Honor, may I ask the witness a
21 question?

22 *THE COURT:* Yes. Go ahead.

23 He wants to ask you one question.

24 *MR. BROWN:* Well, I may have more than one, Your
25 Honor.

1 THE COURT: Well, we're not going to spend a lot of
2 time going over what we've already been over.

3 What do you want to ask him?

4 **CYRUS CRUM,**

5 having been previously sworn, testified further as follows:

6 **DIRECT EXAMINATION**

7 **BY MR. BROWN:**

8 Q. Officer Crum, did Alisha Priest state that from
9 December 4th, 2013, to April 14th, 2014, Mr. Killough and a
10 man named Mr. Salas brought 1 kilogram of methamphetamine to
11 her residence three times a week?

12 A. She indicated that time frame, yes, sir.

13 Q. And isn't it true that Mr. Killough was incarcerated
14 from January 14th through April 2014?

15 THE COURT: Mr. Brown, we've already established
16 that she was mistaken on the dates. That's already been
17 established. I don't know that we gain anything by going over
18 all that again.

19 Q (BY MR. BROWN) And there is Alisha Feeney who testified
20 regarding Mr. Stikeleather; is that true?

21 A. Testified? I'm not sure.

22 Q. I'm sorry, provided a statement regarding
23 Mr. Stikeleather?

24 A. I believe she did speak about him at different
25 points, yes, sir.

1 Q. Okay. And Mr. Stikeleather has been questioned by
2 the police considerably in these cases; is that right?

3 A. I've spoken to him once.

4 Q. But there are other police reports out there from
5 fellow agents that are addressing Mr. Stikeleather as it
6 specifically applies to Mr. Killough?

7 A. Yes, sir.

8 THE COURT: Mr. Brown, where in your sentence --
9 motion for sentence variance is what we're now -- you're now
10 asking about? Where do you allege that?

11 Are you through with the witness?

12 MR. BROWN: I don't think so, Your Honor. You
13 asked --

14 THE COURT: Okay. Well, where do you allege what
15 you were just asking him about?

16 MR. BROWN: I'm sorry?

17 THE COURT: Where do you allege what you were just
18 asking about in the motion for sentence variance?

19 MR. BROWN: Well, it's page 2 in a proffer interview
20 approximately two weeks later, Priest states from
21 December 4th, 2013 --

22 THE COURT: Okay. But that's not anything about
23 strick -- or whatever his name was. Let's confine what your
24 questions are to the allegations you've made in the motion for
25 sentence variance.

1 MR. BROWN: Well --

2 THE COURT: And you've already asked him about
3 Priest.

4 MR. BROWN: And then Priest talks about -- or
5 Stikeleather is connected to Priest.

6 THE COURT: Okay. What do you want to ask him next?
7 And let's move on.

8 MR. BROWN: Because Stikeleather --

9 THE COURT: What do you want to ask him next? I'm
10 going to let him ask you another question, if you would like.

11 Q (BY MR. BROWN) Does Mr. Stikeleather ever connect
12 Mr. Killough to Mr. Salas like Alisha Priest does?

13 A. Yes.

14 Q. In what way?

15 A. As in the -- the group of them are distributing large
16 quantities of methamphetamine.

17 Q. Specifically, Stikeleather said he sold a few ounces
18 to Mr. Killough; is that right?

19 A. At one point, yes.

20 Q. And yet Mr. Killough and Mr. Salas are supposed to be
21 selling kilograms to customers, one of which is
22 Mr. Stikeleather?

23 A. I know y'all get hung up on this quite a bit, but
24 roles change almost weekly, daily. At one point you're
25 selling, next point you're buying. It's a supply issue,

1 supply and demand.

2 Q. Three times a week, you've got your hands on
3 kilograms --

4 THE COURT: I think you're arguing with him. Let's
5 wind this up. If you have any specific facts you want to ask
6 him about, not arguments, ask him.

7 Q (BY MR. BROWN) How can you explain that someone who
8 distributes supposedly kilogram quantities in that same time
9 period is buying ounces from his own customer?

10 A. I believe I've already explained that.

11 Q. How is that, his own customer?

12 A. I've already explained that, sir.

13 Q. I didn't hear the answer.

14 A. That there are -- it is a very fluid world in this
15 situation, where one day you can be a source, one day you can
16 be a buyer, one day you can be a runner where the kilogram
17 that you're being held responsible for is just passing through
18 your hands, but at the same time you've got your own customers
19 that you need to supply, or you may not be able to be in touch
20 with one. I mean, I could sit here for the next year and come
21 up with different ways how that -- your idea that those don't
22 mesh is inaccurate.

23 Q. You're buying ounces from the own -- the customer
24 that you sold kilos to?

25 A. Absolutely. It happens all the time.

1 Q. Even though Alisha --

2 THE COURT: That's an argument.

3 Q (BY MR. BROWN) Does Alisha Feeney connect Mr. Killough
4 to Mr. Salas?

5 A. I don't know. I don't recall whether that particular
6 thread is through the needle.

7 Q. But she purchased from Stikeleather, is that right,
8 Alisha Feeney?

9 A. Yes. She distributed -- her and Kyle distributed
10 methamphetamine with Stikeleather, yes, sir.

11 Q. And Ms. Priest --

12 MR. BROWN: I'm sorry, Your Honor, I'm getting my
13 names confused.

14 Q (BY MR. BROWN) Stikeleather claims he purchased from
15 Mr. Salas, but doesn't mention anything about Salas and he
16 being together, is that right, Stikeleather, Salas, and
17 Killough?

18 A. The three of them being together?

19 Q. Yes.

20 A. I don't know -- I'm not sure in what instance you're
21 talking about.

22 Q. Any instance where they were -- where supposedly
23 Salas and Killough were together every day, always seen by
24 Ms. Priest?

25 A. For a period of months, yes, sir.

1 Q. And yet --

2 THE COURT: Let's don't make an argument.

3 MR. BROWN: Well, then I've got no further questions
4 for Officer Crum.

5 THE COURT: Okay. Then you can step down.

6 Okay. Have your client -- you can come back to the
7 microphone, podium, and make whatever statement you want to
8 make on behalf of your client.

9 MR. BROWN: Your Honor, when it comes to the
10 requirement to accept quantities for relevant conduct, there
11 needs to be an indicia of reliability. It's been shown that
12 Ms. Priest is not reliable. The first time she sat down with
13 officers in a custodial interview, the extent of her knowledge
14 she claims about Mr. Killough was they smoked meth together.

15 In a second interview, a proffer interview, where
16 oftentimes there's an enticement to tell the truth because
17 there may be a benefit coming to the profferee, she says more
18 than that; that she always saw Mr. Salas and Mr. Killough
19 together; that they distributed kilogram quantities to the
20 tune of 54 kilograms, during a time frame that she's very
21 specific about that has been shown to be wrong, completely
22 wrong, and there is no explanation by her as to how she could
23 be specific on dates, yet be so wrong about the time that
24 she's talking about.

25 And the government's explanation is, oh, she was

1 wrong about dates, but the quantities, we can trust because we
2 have Alisha Feeney and Mr. Stikeleather, who when they
3 implicate Mr. Killough, are talking about he's purchasing a
4 few ounces, a few half ounces, and yet the only person that
5 puts kilogram quantities on Mr. Killough is Alisha Priest.

6 56 kilograms is his relevant conduct. 54 of those
7 kilograms comes from Alisha Priest, who was not honest either
8 the first time or the second time she was talking to the
9 police because she mentioned nothing the first time, except I
10 know him, we smoked meth together.

11 Then there's 54 kilograms, and it's inconsistent,
12 the amount of kilograms that he supposedly had his hands on,
13 and at the same time he's buying ounces from a customer that
14 supposedly walks with Mr. Salas repeatedly and often to buy
15 9-ounce quantities, 16-ounce quantities. That customer never
16 mentions Mr. Killough.

17 So there's a significant disconnect between what's
18 accurate, what should be relevant and considered by the Court
19 as an indicia of reliability. The indicia of unreliability is
20 significant.

21 And because of that, to sentence a man to life in
22 prison without parole, based on one person's statement that's
23 uncorroborated specifically by anything, is wholly
24 unreasonable and it's excessive punishment. We ask the Court
25 to downwardly depart, not sentence this man to life

1 imprisonment because of the quantities of one person. He was
2 never busted with anything more than 13 grams.

3 *THE COURT:* Anything else?

4 *MR. BROWN:* No.

5 *THE COURT:* Okay. Mr. Killough, you have the right
6 to make any statement or presentation you would like to make
7 on the subject of mitigation, that is, the things you think
8 the Court should take into account in determining what
9 sentence to impose, or on the subject of sentencing more
10 generally, and at this time I'll invite you to do that.

11 *MR. BROWN:* He's going to decline that, Your Honor.

12 *THE COURT:* You don't want to make a statement?

13 *THE DEFENDANT:* No, sir. I have speaking problems.

14 *THE COURT:* Pardon?

15 *THE DEFENDANT:* I have speaking problems. I don't
16 speak in public. Sorry. Apologize.

17 *THE COURT:* Well, your imprisonment range is life
18 and presumptively that's a reasonable sentence, so the
19 question is, is there something about this case that would
20 cause it -- that presumption to be overcome.

21 One of the things, of course, the Court's to
22 consider is the factors the Court is obligated to consider
23 under 18 United States Code Section 3553(a), and when I
24 consider those factors, a life sentence does appear to be a
25 reasonable sentence.

1 For example, your criminal history indicates that
2 you have absolutely no respect for the law. You're 29 years
3 of age, and you have a criminal history that is almost a
4 yearly -- maybe more than once a year episode of crimes.

5 It starts at age 18 when you pleaded guilty to
6 assault causing a bodily injury. Apparently you participated
7 in a fun event of beating up a person to the point that he had
8 a broken face, a broken jaw, and very serious injuries.

9 And as far as I can tell from what -- the
10 information in paragraph 49 of the Presentence Report, there
11 was absolutely no justification for the assault on that
12 person, other than one of your group felt like -- let's see
13 what -- how was it put. One of your group wanted to hurt him,
14 and you and the other members of your group sure did hurt him.

15 You pleaded guilty to that offense, and that was a
16 reduction. You pleaded guilty to assault causing bodily
17 injury. That was a reduction from aggravated assault, and I
18 can find from a preponderance of the evidence from the
19 information shown in paragraph 49 of the Presentence Report,
20 you were actually guilty of aggravated assault causing serious
21 bodily injury, but it was reduced to the offense you pleaded
22 guilty to, I suspect because of your age, and you were given a
23 deferred adjudication of only 24 months, but that was revoked
24 because you violated it, and then you ended up with a light
25 90-day prison sentence.

1 And then at age 20, you were convicted of theft from
2 a person, and you received a 5-years deferred adjudication
3 there, again, apparently because of your age, and then you
4 violated the conditions of that deferred adjudication and
5 you -- that was revoked, and you received a 6-month prison
6 sentence. Again, you received a light sentence, and the
7 reason it was revoked is because you committed a new offense
8 of aggravated assault with a deadly weapon.

9 And then there was a second petition to proceed to
10 adjudication when you committed the offense of theft of
11 property in September 2010.

12 I think the record I have before me shows that
13 perhaps that aggravated assault with a deadly weapon offense
14 did not result in a conviction. As a matter of fact, I think
15 that was no billed, so I'm not taking that into account.

16 At age 21, you pleaded guilty to reckless driving.
17 You got another deferred adjudication.

18 Age 23, you were convicted of theft of property.
19 You were sentenced to 30-days imprisonment, another slap on
20 the wrist.

21 At age 24, you were convicted of criminal mischief.
22 You got a 130-day sentence of imprisonment.

23 Age 24 again, you were convicted of burglary of a
24 motor vehicle. You got a 20-day sentence of imprisonment
25 then.

1 Age 24 again, you were convicted of deadly conduct.

2 You got another light sentence, 130-days imprisonment.

3 And you now have pending against you -- or you
4 pleaded guilty of possession with intent to deliver a
5 controlled substance. That was related to the offense in
6 question. It was a state court offense you pleaded guilty to.
7 That was methamphetamine.

8 Age 26, you were convicted of unlawful possession of
9 a firearm by a felon, and apparently that was related to the
10 offense of conviction.

11 You were convicted again at age 26 of unlawful
12 carrying of a weapon and that, again, is related to the
13 offense of conviction.

14 At age 23, you were charged with burglary of a
15 habitation, but you were fortunate and no billed, but I can
16 tell from the information in paragraph 62 of the Presentence
17 Report that, in fact, you did engage in the conduct described
18 in that paragraph.

19 Age 24, you were charged with fraudulent
20 use/possession of identifying information. That was
21 dismissed, so it's not a conviction, but I can tell from the
22 information in paragraph 63 of the Presentence Report that you
23 engaged in the conduct and did the things that are described
24 in that paragraph.

25 And in each of those instances where I have found

1 that you engaged in conduct, I make those findings by a
2 preponderance of the evidence.

3 And in paragraph -- at age 25, again, you were
4 charged with unauthorized use of a motor vehicle, an offense
5 that was dismissed, but I can tell from the information in
6 paragraph 64 of the Presentence Report that you actually
7 committed that offense.

8 I can't find any justification for not imposing a
9 guideline sentence in this case. When I consider all of the
10 factors that the Court should consider in sentencing under 18
11 United States Code Section 3553, I find that such a sentence
12 is a reasonable sentence and is an appropriate sentence to be
13 applied, so I'm going to impose a sentence of life
14 imprisonment.

15 The Court orders and adjudges that the defendant be
16 committed to the custody of the Bureau of Prisons to serve a
17 term of imprisonment for his entire life.

18 I'm also ordering that the defendant serve a term of
19 supervised release of 8 years, if he were to ever under any
20 circumstance be released from prison, and the conditions of
21 that supervised release will be the standard conditions set
22 forth in the judgment of conviction and sentence.

23 The Court -- in addition to the standard conditions,
24 the defendant will be subject to the conditions I'm now
25 outlining:

1 He shall not commit another federal, state, or local
2 crime.

3 He shall not unlawfully possess a controlled
4 substance.

5 He shall cooperate in the collection of DNA as
6 directed by the probation officer.

7 He shall participate in mental health treatment
8 services as directed by the probation officer until
9 successfully discharged, and those services may include
10 prescribed medications by a licensed physician, and he'll
11 contribute to the cost of those services at the rate of at
12 least \$25 a month.

13 He shall refrain from any unlawful use of a
14 controlled substance and shall submit to one drug test within
15 15 days of release from imprisonment and at least two periodic
16 drug tests thereafter as directed by the probation officer.

17 He shall participate in a program approved by the
18 probation officer for treatment of narcotic or drug or alcohol
19 dependency that will include testing for the detection of
20 substance use, and he shall abstain from the use of alcohol
21 and all other intoxicants during and after completion of that
22 treatment, and he'll contribute to the cost of those services
23 at the rate of at least \$25 a month.

24 I'm also ordering the defendant to pay a special
25 assessment of \$100. That's payable immediately to the United

1 States of America through the office of the clerk of court
2 here in Fort Worth.

3 Mr. Killough, you have the right to appeal from the
4 sentence I've imposed, if you're dissatisfied with it. That
5 appeal would be to the United States Court of Appeals for the
6 Fifth Circuit.

7 You have the right to appeal *in forma pauperis*, that
8 means without any cost to you, if you were to qualify for it,
9 and presumably you would. You have the right to have the
10 clerk of court file a notice of appeal for you, and the clerk
11 will do that forthwith, if you were to specifically request
12 it.

13 You and your attorney have been given a form that
14 outlines certain rights and obligations in reference to an
15 appeal. If you haven't already done so, I want the two of you
16 to review it and be sure you understand it, and once both of
17 you are satisfied you understand it, I want both of you to
18 sign it and return it to the court coordinator.

19 Has that been done, Mr. Brown?

20 MR. BROWN: Yes, Your Honor.

21 We have to object to the reasonableness of the
22 sentence, but it has been turned in to the court coordinator.

23 MR. SMITH: And, Your Honor, the government would
24 move to dismiss the indictment filed on May 18, 2016, as to
25 this defendant only.

1 THE COURT: Okay. That motion is granted and that
2 indictment is dismissed as to this defendant only.

3 Apparently that's a superseding indictment that was
4 filed on that date?

5 MR. SMITH: That was the May 18 one, Your Honor, I
6 believe is the original one.

7 THE COURT: Okay.

8 MR. SMITH: He went to trial -- he went to trial on
9 a superseding.

10 THE COURT: Okay. You filed so many superseding
11 indictments in this case, it's kind of hard to keep up with
12 them.

13 MR. SMITH: Yes, Your Honor.

14 THE COURT: I show that the May 18 indictment was a
15 superseding indictment. Are you saying that's the first time
16 this defendant was brought into the case?

17 MR. SMITH: Yes. Yes, Your Honor.

18 THE COURT: Okay.

19 MR. SMITH: And the Court is correct, that was a
20 superseding indictment.

21 THE COURT: Okay. I've granted that motion.

22 Okay. The defendant's remanded to custody, and the
23 attorneys are excused.

24 MR. BROWN: Your Honor, two matters. I didn't hear
25 the Court expressly rule on the motion for a sentence

1 variance.

2 THE COURT: I thought I -- did you hear me sentence
3 him to life?

4 MR. BROWN: Yes, Your Honor. I guess that was an
5 implicit --

6 THE COURT: I thought maybe you would take that as
7 an implication that your motion was denied. In case you want,
8 specifically, me to say your motion is denied, your motion is
9 denied.

10 MR. BROWN: All right. Thank you, Your Honor.

11 And we would request a designation to El Reno.

12 THE COURT: Pardon?

13 MR. BROWN: We would request a designation from the
14 Court to El Reno as a recommendation.

15 THE COURT: I don't recommend locations for
16 confinement.

17 MR. BROWN: And just for the record, to make sure,
18 we object to the reasonableness of the sentence.

19 (End of Proceedings)

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REPORTER'S CERTIFICATE

I, Debra G. Saenz, CSR, RMR, CRR, certify that the foregoing is a true and correct transcript from the record of proceedings in the foregoing entitled matter.

I further certify that the transcript fees format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signed this 13th day of June, 2017.

10 /s/ Debra G. Saenz

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14th [2] 27/9 27/14	6-month [1] 36/5	
15 [4] 8/6 12/23/3 39/15	6-ounce [1] 23/10	
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2-kilogram [1] 22/15	817.252.5200 [1] 1/16	
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20-day [1] 36/24	817.992.5282 [1] 1/19	
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2013 [2] 27/9 28/21	9-ounce [1] 33/15	
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